



Agenda Date: 9/16/09  
Agenda Item: IVC

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
Two Gateway Center  
Newark, NJ 07102  
[www.nj.gov/bpu](http://www.nj.gov/bpu)

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF )  
LOOKING GLASS NETWORKS, INC. AND LEVEL )  
3 COMMUNICATIONS, LLC FOR AUTHORITY TO )  
COMPLETE A PRO FORMA MERGER AND )  
OTHER RELIEF )

ORDER OF APPROVAL

DOCKET NO. TM08121088

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

On December 16, 2008, Looking Glass Networks, Inc. ("LGN") and Level 3 Communications, LLC ("Level 3 LLC") (collectively "Petitioners"), by their counsel, filed a petition with the Board of Public Utilities ("Board") requesting authority, under N.J.S.A. 48:2-51.1, to merge LGN with Looking Glass Networks Holding Co., Inc. ("LGN Holding") and to merge LGN Holding with Level 3 LLC, the surviving entity. The Petitioners also seek the authority to surrender LGN's authority to provide local exchange and interexchange service in New Jersey; authority to transfer LGN's customers to Level 3 LLC; and authority for LGN to abandon service in New Jersey. The petition also sought a waiver of the notice and other requirements of N.J.A.C. 14:10-12.1 et seq. (the "Mass Migration Rules"). However, on August 13, 2009, Petitioners submitted a letter to the Board seeking to amend its Petition by proposing a customer notification process in lieu of a waiver of the Mass Migration Rules.

**BACKGROUND**

LGN is a wholly owned subsidiary of LGN Holding, which in turn is owned by Level 3 LLC. LGN's principal business address is 1025 Eldorado Blvd., Broomfield Colorado 80021. LGN was authorized to provide facilities-based competitive interexchange and local exchange services in New Jersey pursuant to authority granted by Order of the Board on April 11, 2001. See Order, I/M/O the Petition for an Order Authorizing Looking Glass Networks, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00050288. According to the Petitioners, LGN has only enterprise and carrier customers in New Jersey. Level 3 LLC is a Delaware limited liability company with its principal business offices located in Broomfield, Colorado. Level 3 LLC is, in turn, a wholly owned subsidiary of Level 3 Communications Inc. ("Level 3"), a Delaware corporation publicly traded on the NASDAQ. Through its subsidiaries, Level 3 is authorized to provide telecommunications services throughout the United States. In New Jersey, Level 3 has five operating subsidiaries that are certified by the Board: Broadwing Communications, LLC; Level 3 Communications, LLC; WilTel Communications, LLC; TelCove Operations and Looking Glass Networks, Inc.



Previously, Level 3 acquired LGN Holding in a transaction that was approved by the Board on July 21, 2006. See Order I/M/O The Verified Petition of Level 3 Communications LLC and Looking Glass Networks, Inc. For Grant of Authority to Complete a Series of Transactions Resulting in the Transfer of an Authorized Carrier, Docket No. TM06060451.

## **DISCUSSION**

According to the petition, for the past several years Level 3 has been in the process of integrating the networks of its various subsidiaries, including LGN. As a result of this integration, the independent existence of LGN is no longer necessary for providing service to customers and can be consolidated within Level 3 LLC. Petitioners state that in order to streamline and better organize the business and operations of Level 3's various operating companies, Level 3 proposes that LGN be merged with LGN Holding, and that LGN Holding then be merged into Level 3 LLC. Upon consummation of the transaction, the Petitioners propose that LGN's New Jersey customers would become Level 3 LLC's customers and LGN would surrender its authority to provide services in New Jersey.

Petitioners assert that the proposed transaction is in the public interest because it will enable Level 3 LLC to be a stronger, more efficient competitor in the New Jersey marketplace. Furthermore, LGN customers will continue to receive their existing services over the same facilities and at the same rates, terms and conditions that they received prior to the transfer. Petitioners also assert that because the bills LGN customers currently receive identify LGN as a Level 3 company, the transfer will not cause customer confusion. Petitioners note that LGN has only enterprise and carrier customers in New Jersey, and LGN does not have any employees in New Jersey.

In the petition filed with the Board on December 16, 2008, Petitioners originally requested a waiver of the Mass Migration Rules and proposed to send advance notice to affected customers at least thirty (30) days before the transfer. In a following letter filed with the Board on August 13, 2009, Petitioners withdrew their request to waive the Mass Migration Rules. Instead, the Petitioners propose a streamlined process of customer notice and transfer pursuant to N.J.A.C. 14:10-12.6(m), which provides that the requirements contained in the Mass Migration Rules may be modified to accommodate unique circumstances. The provision further states that if the proposed special procedures provide for "equivalent or better end user service as the requirements of [the Mass Migration Rules]," parties may request approval from Board Staff to implement the special procedures. The Petitioners have proposed to distribute a customer notice letter to affected customers that would contain language informing customers that they have the right to select an alternate telecommunications service provider. The Petitioners propose that this letter will be sent out to customers sixty (60) days prior to the planned transfer of customers, consistent with the provisions of N.J.A.C. 14:10-12.5(a). The Petitioners argue that the Board may depart from the Mass Migration Rules in this instance because the Petitioners are already members of the same family of companies; no actual physical migration of customers will be required to accomplish the proposed transaction; and LGN does not serve any residential customers. Petitioners assert that the proposed customer transfers differ in significant and material ways from the types of customer transfers sought to be protected by the Board's Mass Migration Rules. Petitioners also state that they believe that the imposition of additional requirements beyond those proposed by Petitioners will not provide appreciable benefits to LGN customers and may result in unnecessary confusion.

The Department of the Public Advocate, Division of the Rate Counsel ("Rate Counsel"), in a letter dated April 4, 2009, recommended that the Board approve the Petition subject to the addition of language to the customer notice informing customers of the availability of alternate service



providers. As discussed above, Petitioners have revised the notice to include this language. Rate Counsel has not submitted further comments.

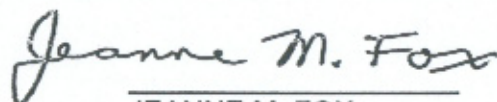
### FINDINGS AND CONCLUSIONS

After careful review of this matter, the Board FINDS that the transaction will have no negative impact on competition, the rates of current customers, or on employees. The Board also FINDS that the transactions will have no negative impact on the provision of safe, adequate and proper service, and moreover, a positive benefit may be expected from the strengthening of Level 3 LLC's competitive posture in the telecommunications market. Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the transfer is in accordance with the law and in the public interest. The Board also FINDS that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, LGN is responsible for the filing its final annual report with the Board and for the payment of any outstanding assessment liabilities.

The Board FURTHER FINDS that the customer notification process proposed by Petitioners is in compliance with the Mass Migration Rules, and the Board HEREBY ORDERS that the Petitioners provide notice to affected customers consistent with the proposal contained in the August 13, 2009 letter amending their petition. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. The Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent it has not been exercised prior to September 30, 2010.

DATED: 9/16/09

BOARD OF PUBLIC UTILITIES  
BY:




JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER



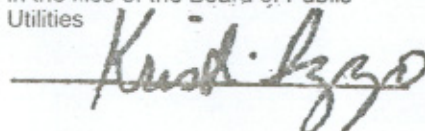
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



Service List

Docket No. TM08121088

Colleen A. Foley  
Saul Ewing LLP  
One Riverfront Plaza  
Fifth Floor  
Newark, NJ 07102  
[cfoley@saul.com](mailto:cfoley@saul.com)

Rogelio Peña  
Regulatory Counsel  
1025 Eldorado Blvd.  
Broomfield, CO 80021  
[Rogelio.pena@level3.com](mailto:Rogelio.pena@level3.com)

Jose Rivera-Benitez  
Division of Rate Counsel  
Department of the Public Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101  
[njratepayer@advocate.state.nj.us](mailto:njratepayer@advocate.state.nj.us)

James F. Murphy  
Rocco Della Serra  
Board of Public Utilities  
Division of Telecommunications  
Two Gateway Center  
Newark, NJ 07102  
[james.murphy@bpu.state.nj.us](mailto:james.murphy@bpu.state.nj.us)  
[rocco.della-serra@bpu.state.nj.us](mailto:rocco.della-serra@bpu.state.nj.us)

Jessica Campbell  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street – 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07102  
[jessica.campbell@dol.lps.state.nj.us](mailto:jessica.campbell@dol.lps.state.nj.us)